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IN THE

Supreme Court of the United States

October Term, A. D. 1933.

CONCORDIA FIRE INSURANCE COMPANY, a corporation,
Appellant,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS,
Appellee.

Appeal from the Supreme Court of the State of Illinois.

BRIEF FOR APPELLANT.

GEORGE WHARTON PEPPER,
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People of the State of Illinois v. Concordia Fire Insurance Company, 350 Ill. 365.

JURISDICTION OF THIS COURT.

Appellant having heretofore filed its printed statement as to the jurisdiction of this Court, and its brief in opposition to the motion of the appellee to dismiss or affirm, it omits from its brief herein, in accordance with Rule 27 of this Court, the statement of the grounds upon which the jurisdiction of this Court is invoked.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, A. D. 1933.

CONCORDIA FIRE INSURANCE COMPANY, a Corporation, *Appellant,* vs. THE PEOPLE OF THE STATE OF ILLINOIS, *Appellee.*	Appeal from the Supreme Court of the State of Illinois.

BRIEF FOR APPELLANT.

CONCISE STATEMENT OF THE CASE.

This is an appeal by the Concordia Fire Insurance Company (a Wisconsin corporation) from a judgment of the Supreme Court of Illinois rendered against it and in favor of the State of Illinois on October 22, 1932. The judgment was for $18,206.19 (with costs) which represented taxes claimed by Illinois for the year 1927, and a portion of the taxes claimed for the years 1923 to 1926, inclusive.

In 1928 Illinois brought suit in the Circuit Court of Cook County against Concordia Fire Insurance Company to recover taxes for these years under Section 30 of the Illinois Act of March 11, 1869, entitled "An Act to Incorporate and to Govern Fire, Marine and Inland Navigation Insurance Companies doing Business in the State of Illi-

nois." (Appendix p. 53.) Section 30 of the Act imposed a tax on the net receipts of foreign corporations doing such insurance business "at the same rate" as that imposed upon "other personal property."

Section 30 of the Act of 1869 had been before this Court in the case of *Hanover Fire Insurance Company* v. *Harding*, 272 U. S. 494 (decided in 1926). In that case, the Supreme Court of Illinois having held that the Act imposed an occupation or privilege tax and that the foreign insurance company (Hanover) was taxable upon *all* of its local net receipts, this Court held that, so construed, the Act violated the Fourteenth Amendment to the Constitution of the United States because domestic corporations of the same class and engaged in the same kind of business were required to pay a tax on their personal property assessed only *at a reduced valuation.*

In the case at bar, on March 21, 1932, the Circuit Court, after hearing proofs and arguments, entered judgment for Concordia. Illinois appealed to the State Supreme Court.

Concordia was incorporated as a fire, marine and inland navigation insurance company, and underwrote those classes of insurance in Illinois. Under statutes permitting it to do so, it also at the dates involved in this suit was engaged in insuring against automobile hazards, explosion, sprinkler leakage and other risks. It had paid to the State of Illinois a tax for the privilege of carrying on such business in that State, and had been duly licensed to transact such business in said State.

Under the laws of Illinois, foreign unincorporated competitors of Concordia and foreign casualty companies (competing with Concordia) were not taxed under the Act of 1869, nor were they required to pay in any other form any equivalent tax. And domestic corporations competing with

Concordia were, in computing their property taxes, permitted to deduct their losses. This deduction the laws of Illinois did not permit to Concordia. Concordia's losses amounted to forty-five per cent of its net receipts.

When the appeal in the present case came before the Supreme Court of Illinois, that Court treated the tax as a property tax (instead of an occupation or privilege tax as it had theretofore held), and held that as such it was not violative of the Fourteenth Amendment. It held that the appellant was taxable not only on its net receipts from fire, marine and inland navigation business, but also from all other hazards. And it also held that Concordia must pay taxes for the year 1927 based upon 100% of its estimated net receipts—although all other forms of property were taxed on a basis of sixty per cent of full value as assessed value.

Briefly and generally, the question now before this Court is whether Section 30 of the Act of 1869, interpreted as imposing a property tax, is valid, and whether it is less unlawfully discriminatory when interpreted as a property tax than when interpreted as an occupation or privilege tax.

Assigned errors here urged.

(*a*) The Supreme Court of the State of Illinois erred in adjudicating and deciding that Section 30 of an Act of the General Assembly of the State of Illinois entitled "An Act to incorporate and to govern fire, marine and inland navigation insurance companies doing business in the State of Illinois," approved and in force March 11, 1869, as amended by an Act approved May 31, 1879, and in force July 1, 1879, was and is a good and valid enactment, and was and is not repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

(*b*) The Supreme Court of the State of Illinois erred in denying the claim of the appellant that said Section 30 was repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States, in that appellant, being a corporation organized under the laws of the State of Wisconsin, and transacting the business of insurance in the State of Illinois, after having paid to said State of Illinois a tax for the privilege of carrying on its said business in Illinois, and having secured the license, permission and authority of the State of Illinois so to transact the said business of insurance, was held subject to and taxed on its net receipts derived from insurance against lightning, earthquakes, windstorms, cyclones, tornadoes, tempests, hail, frost, snow, ice, sleet, weather, flood, rain, drought, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, explosions (other than steam boiler), sprinkler leakage, and general automobile and vehicle insurance, while casualty insurance companies organized under the laws of states other than the State of Illinois, foreign unincorporated associations, Lloyds, foreign mutuals, reciprocals and other associations of individuals, constituting foreign insurers, and doing business in the State of Illinois, in direct competition with appellant in the business of insuring against the foregoing hazards were and pay no tax or any equivalent on the net receipts derived by such other insurers from such hazards. (Rec. 159.)

(*c*) The Supreme Court of the State of Illinois erred in denying the claim of appellant that said Section 30 was repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States, in that appellant being a corporation organized under the laws of the State of Wisconsin, and transacting the business of insurance in the State of Illinois, and having paid the

said State of Illinois a privilege tax for such purpose, and secured permission and authority from the said state so to transact the business of insurance, was subject to a tax on its net receipts derived from said business of insurance, and was denied the right to deduct its loss payments from its gross receipts in determining the amount of its net receipts, while domestic insurance companies insuring against similar hazards were permitted to deduct the amount of their loss payments and were not required to pay a tax thereon. (Rec. 160.)

(*d*) The Supreme Court of the State of Illinois, by its final judgment and decision, denied to the appellant the equal protection of the laws in violation of Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States, in that the Board of Review of Cook County in the assessment of taxes upon all other personal property for the year 1927, uniformly, systematically, and deliberately valued such property at only sixty per cent of its true, actual, full value, whereas the Board of Review in making its assessments against the net receipts of the appellant, did not take sixty per cent of the true, actual, full value thereof, but assessed said net receipts at one hundred per cent of their value instead of at sixty per cent, as all other personal property was assessed. (Rec. 161.)

(*e*) The Supreme Court of the State of Illinois erred in reversing the judgment of the Circuit Court of Cook County, and erred in entering judgment against the appellant, which said action, ruling and adjudication of the Supreme Court of the State of Illinois are in contravention of Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States. (Rec. 161.)

SUMMARY OF ARGUMENT.

I.

(a) Review of prior litigation involving the validity and construction of Section 30 of the Act of 1869, and related acts.

National Fire Insurance Company v. *Hanberg*, 215 Ill. 378.

Fidelity & Casualty Company v. *Board of Review*, 264 Ill. 11.

People of the State of Illinois v. *Kent*, 300 Ill. 324.

People of the State of Illinois v. *Barrett*, 309 Ill. 53.

Hanover Fire Insurance Company v. *Carr*, 317 Ill. 366.

Hanover Fire Insurance Company v. *Harding*, 272 U. S. 494.

Hanover Fire Insurance Company v. *Harding*, 327 Ill. 590.

People of the State of Illinois v. *Franklin National Insurance Company*, 343 Ill. 336.

(b) Section 30 of the Act of 1869, construed as a property tax, is unconstitutional and void.

First National Bank v. *Maine*, 284 U. S. 312.

Farmers Loan & Trust Company v. *Minnesota*, 280 U. S. 204.

II.

(a) **Foreign casualty companies and other foreign insurers doing business in direct competition with the appellant in insuring against automobile hazards, explosion, sprinkler leakage, hail, riot, civil commotion, and other risks, are not required to pay any tax upon their net receipts, or any like tax. This creates an arbitrary discrimination against appellant, and deprives it of the equal protection of the laws, contrary to the fourteenth article of amendment to the Constitution of the United States.**

Hanover Fire Insurance Company v. *Harding*, 272 U. S. 494.

Liggett Company v. *Lee*, 288 U. S. 517.

Cumberland Coal Company v. *Board of Revision*, 284 U. S. 23.

Iowa-Des Moines National Bank v. *Bennett*, 284 U. S. 239.

Quaker City Cab Company v. *Pennsylvania*, 277 U. S. 389.

Royster Guano Company v. *Virginia*, 253 U. S. 412.

(b) **If it is now discriminatory, Section 30 of the Act of 1869 can not be sustained on the ground that it was not invalid at the time of its enactment.**

Chastleton Corporation v. *Sinclair*, 264 U. S. 543.

Abie State Bank v. *Bryan*, 282 U. S. 765.

Municipal Gas Company v. *Public Service Commission*, 225 N. Y. 89.

III.

The construction placed upon Section 30 of the Act of 1869 by the Supreme Court of Illinois, denying to foreign fire insurance companies the right to deduct their loss payments from their gross receipts in determining their net receipts, when domestic fire insurance companies competing directly, are in fact allowed to deduct their losses, is repugnant to the fourteenth article of amendment to the Constitution of the United States, in that it deprives appellant of the equal protection of the laws.

Hanover Fire Insurance Company v. *Harding*, 272 U. S. 494.

Southern Railway Company v. *Greene*, 216 U. S. 400.

Cotting v. *Godard*, 183 U. S. 79.

Erie Railway Company v. *State of New Jersey*, 31 N. J. Law 542.

IV.

The estimated net receipts of appellant for the year 1927 were not debased to 60% like all other property in Cook County, for purposes of assessment. Thereby the tax extended upon the assessment so made lacked constitutional uniformity, and was void.

Hanover Fire Insurance Company v. *Harding*, 272 U. S. 494.

Cumberland Coal Company v. *Board of Revision*, 284 U. S. 23.

Iowa-Des Moines National Bank v. *Bennett*, 284 U. S. 239.

Sioux City Bridge Company v. *Dakota County, Nebraska*, 260 U. S. 441.

Raymond v. *Chicago Union Traction Company*, 207 U. S. 20.

Central Railroad Co. of New Jersey v. *Martin*, 65 Fed.(2d) 613.

ARGUMENT.

I.

(a) Review of prior litigation involving the validity and construction of Section 30 of the Act of 1869, and related acts.

It is necessary to an understanding of the questions now presented to consider the judicial history of Section 30 of the Act of 1869, and of the related statutes to which we shall refer. For convenience we have collected the relevant statutes in an appendix to our brief. Section 30 was originally a part of the Revenue Act of 1853, entitled "An Act for the assessment of property, and the collection of taxes in counties adopting township organization law." (Session Laws of Illinois, 1853, pages 3-35.) Section 30 was taken out of the Revenue Act in 1869 and incorporated into the Insurance Act of that year, where it has ever since remained. (Cahill's Illinois Revised Statutes, 1933, Ch. 73, par. 159.)

In 1869 fire, marine and inland navigation insurance companies were restricted in their underwriting in Illinois solely to insurance against fire, marine and inland navigation hazards. (Appendix, p. 52.) By subsequent amendments the hazards against which such companies might insure were enlarged in scope. The legislative changes were chronologically as follows:

1879. Insurance against lightning authorized. Laws of 1879, pages 178-179. (Appendix, p. 54.)

1881. Insurance against tornadoes authorized. Laws of 1881, page 85. (Appendix, p. 55.)

1885. Insurance against windstorms, hail storms and cyclones authorized. Laws of 1885, pages 209-210. (Appendix, p. 57.)

1905. Insurance against damage by sprinkler leakage and fire apparatus authorized. Laws of 1905, page 290. (Appendix, p. 61.)

1911-1912. Automobile, fire, theft and collision insurance authorized. Laws of 1911-1912, page 45. (Appendix, p. 62.)

1919. Scope of transportation insurance enlarged and explosion insurance authorized. Laws of 1919, page 613. (Appendix, p. 64.)

1925. General revision, whereby fire, marine and inland navigation insurance companies were again authorized to insure against all the foregoing hazards, and in addition to insure against theft of automobiles and property damage caused by automobiles. Laws of 1925, page 436. (Appendix, p. 65.)

During the entire period of amendment, Section 30 of the Act of 1869 stood unchanged, and the legislature, in enlarging the scope of the hazards against which fire, marine and inland navigation insurance companies might insure, never indicated in any manner that the net receipts derived from business other than fire, marine and inland navigation insurance were to be returned for taxation.

By the Casualty Insurance Act of April 21, 1899, (Laws of 1899, page 237, Appendix, p. 58), foreign casualty insurance companies were permitted under Section 8 of the Act to make insurances against any insurance risks specified in the articles of incorporation, which might lawfully be the subject of insurance, and the formation of corporations for insuring against which was not otherwise pro-

vided for by the statutes. In 1921, the powers of casualty insurance companies were broadened, and they were authorized to insure against any hazard resulting from the ownership, maintenance or use of any automobile or other vehicles. (Laws of 1921, pages 473-474, Appendix, p. 59.) The last mentioned statute brought foreign fire insurance companies and foreign casualty insurance companies into direct competition in the field of automobile insurance, because both casualty companies and fire companies were authorized to insure automobiles against loss by fire, theft and collision, and to indemnify the owners of automobiles against property damage to others.

In *Fidelity and Casualty Company* v. *Board of Review*, 264 Ill. 11, the Supreme Court of Illinois held that Section 30 of the Act of 1869 had no application to the net receipts of foreign casualty insurance companies authorized to do business in the State of Illinois, and held that foreign casualty insurers were not subject to taxation upon their net receipts. Foreign casualty insurance companies are not subject to any other tax on their net receipts nor to any like tax. They pay taxes only on such tangible property as they own in the county on April 1st of each year. (See, *infra*, p. 31.) Foreign fire insurance companies are likewise taxed on such tangible property.

In *National Fire Insurance Company* v. *Hanberg*, 215 Ill. 378, the Supreme Court of Illinois held that net receipts for purposes of taxation under Section 30 of the Act of 1869 meant gross receipts, less operating expenses, but not less insurance losses paid. Domestic companies are taxed under the general Revenue Act on what they have left at the end of the tax year in the way of money, or whatever their net receipts are invested in, that is, upon what remains of their gross receipts, after the deduction of all operating expenses and losses. (Cahill's Illinois Revised Statutes, 1933, Ch. 120, pars. 1-319.)

In *People* v. *Kent*, 300 Ill. 324, *People* v. *Barrett*, 309 Ill. 53, and *Hanover Fire Insurance Company* v. *Carr*, 317 Ill. 366, the Supreme Court of Illinois held that the tax imposed upon foreign fire insurance companies under Section 30 of the Act of 1869 was not a property tax, but was a license fee for the privilege of doing business in Illinois, and that none of the provisions of the Revenue Act was applicable to the assessment of taxes under Section 30, and that the tax assessing bodies were under a duty to assess the net receipts of foreign fire insurance companies at 100% of the amount thereof, even though, under the Revenue Act, the property of all others was scaled, debased and equalized to an amount less than the full value thereof.

In *Hanover Fire Insurance Company* v. *Harding*, 272 U. S. 494, the judgment of the Supreme Court of Illinois in *Hanover Fire Insurance Company* v. *Carr*, *supra*, was reversed, and the tax assessed was held to be unconstitutional and void, because of the discrimination against foreign stock fire insurance companies who were taxed upon 100% of their net receipts, after being admitted to do business in the state, while competing domestic insurance companies were taxed upon only thirty per cent of their property. This Court considered the tax imposed under Section 30 an excise or business tax. Upon the filing of the mandate of this Court in the Supreme Court of Illinois, that Court, with three of seven judges dissenting, in *Hanover Fire Insurance Company* v. *Harding*, 327 Ill. 590, overruled its prior decisions in *People* v. *Kent*, *supra*, *People* v. *Barrett*, *supra*, and *Hanover Fire Insurance Company* v. *Carr*, *supra*, and held that Section 30 of the Insurance Act of 1869 did not impose an excise, business or occupation tax, but on the contrary imposed a property tax; that net receipts constituted personal property, and that under the Act of 1869 such net receipts should be scaled, debased and

equalized uniformly with other personal property, and the going tax rate applied. The three dissenting justices were of opinion that Section 30 of the Act of 1869 was unconstitutional and void, in view of the decision of this Court in *Hanover Fire Insurance Company* v. *Harding*, *supra*.

In *People* v. *Franklin National Insurance Company*, 343 Ill. 336, the Supreme Court held Section 30 of the Act of 1869, to be constitutional as against the challenge of unlawful discrimination in favor of foreign casualty insurance companies, unincorporated insurers, Lloyd's, and other foreign groups who were not required to pay any taxes on net receipts of their competitive business with foreign fire insurance companies, or any equivalent tax.

In the case at bar, the Supreme Court of Illinois reaffirmed the views expressed in *Hanover Fire Insurance Company* v. *Harding*, 327 Ill. 590, and *People* v. *Franklin National Insurance Company*, 343 Ill. 336, and went further to hold that foreign fire, marine and inland navigation insurance companies were required, under Section 30 of the Act of 1869, to pay taxes, not only upon net receipts derived from insuring fire, marine and inland navigation risks, but also from all other classes of business which was written in direct competition with foreign casualty insurance companies, and other foreign insurers, none of whom was compelled, under the prior decisions of the Court, to pay any tax upon its premiums resulting from insurances effected upon the same risks. The Court did not pass upon the discrimination arising out of the refusal to permit foreign fire insurance companies to deduct their losses, while competing domestic companies were allowed to do so.

To briefly summarize the foregoing, it may be said that:

(1) Foreign fire insurance companies must return and pay taxes under Section 30 of the Act of 1869 upon every

class of business which they do, even though such additional classes were not included in the Act of 1869, and the subsequent acts authorizing the insuring of such additional hazards did not require payment of taxes under Section 30 as a condition to doing such additional business, while foreign casualty insurance companies, foreign individuals, unincorporated associations and Lloyds are exempt from the payment of any taxes upon such directly competitive business, and from any equivalent or substituted tax;

(2) Foreign fire insurance companies are not permitted to deduct insurance losses paid from gross receipts in determining net receipts for purposes of taxation under Section 30, while domestic insurance companies doing the same kind of business, are so permitted, being taxed only upon what property they have left at the end of each tax year, after paying their operating expenses and losses.

(3) Considering the tax under Section 30 a property tax, net receipts must be treated and debased to 60% like all other property.

(b) Section 30 of the Act of 1869, construed as a property tax, is unconstitutional and void.

It was insisted in *Hanover Fire Insurance Company* v. *Harding*, 327 Ill. 590, *People* v. *Franklin National Insurance Company*, 343 Ill. 336 and by the appellant in the instant cause that Section 30 could properly be regarded only as imposing a business or occupation tax. This contention was in harmony with the view which had already been adopted by this court in *Hanover Insurance Co.* v. *Harding*, 272 U. S. 494 when this very section was under consideration. This Court, accepting the view that the tax was a business or occupation tax, had observed that

payment of the tax was not a condition precedent to entering the State and had held that when the appellant had satisfied the conditions for doing business imposed by the State of Illinois, it might not thereafter vary the terms of the original license by enforcing a new condition involving a deprivation of Federal constitutional rights.

In the instant case the appellant reiterates the contention that the tax in question is a business or occupation tax and urges that the invalidity of the section imposing it (as applied to the appellant) is settled by the prior decision of this Court. To attempt to escape from the conclusive judgment of this court, as the court below has attempted to do, by imputing to the Legislature of Illinois, the intention to impose a tax upon the personal property of the appellant is to impute to that Legislature an intention to tax property which, for the purposes of taxation, had no situs in Illinois. The money paid by policyholders in Illinois and passing into the hands of appellant in Wisconsin, no matter what may have been the medium or method of payment, became, upon receipt, the intangible personal property of the Wisconsin corporation and as such might be taxed by Wisconsin and Wisconsin alone. Under the principles laid down in the *Farmers Loan and Trust Company* v. *Minnesota,* 280 U. S. 204, which find their latest application in *First National Bank* v. *Maine,* 284 U. S. 312, property taxes upon intangibles may be imposed only at their situs; to construe Section 30 of the Act of 1869 as imposing a property tax, in direct contravention of the construction afforded it by this Court, brings the taxes so imposed on property having its situs in Wisconsin within the prohibition of the cases referred to.

II.

(a) Foreign casualty companies and other foreign insurers doing business in direct competition with the appellant in insuring against automobile hazards, explosion, sprinkler leakage, hail, riot, civil commotion, and other risks, are not required to pay any tax upon their net receipts, or any like tax. This creates an arbitrary discrimination against appellant, and deprives it of the equal protection of the laws, contrary to the fourteenth article of amendment to the Constitution of the United States.

Originally fire, marine and inland navigation insurance companies were restricted under the Act of 1869 to insuring against those hazards. As the need developed, the legislature, from time to time by amendment to the Fire, Marine and Inland Navigation Insurance Act, permitted insurance against other hazards. Foreign casualty insurance companies were, in 1899, authorized to transact business in Illinois. Both foreign fire, marine and inland navigation insurance companies, and foreign casualty insurance companies are authorized to, and do, write in direct competition with each other, insurances against the hazards of automobile theft, fire, collision, and property damage, explosion, sprinkler leakage, tornado, hail, rain and other hazards. The existence of such competition was stipulated. (Rec. 98-99.) We have included, as an appendix to our brief (page 69), a table showing the extent to which foreign fire, marine and inland navigation insurance companies, were, during the years in question, in direct competition with foreign casualty companies in writing some of the risks mentioned.

In *Fidelity and Casualty Company* v. *Board of Review,* 264 Ill. 11, the Supreme Court of Illinois held that foreign casualty insurance companies were not required under Section 30 of the Act of 1869 to pay a tax upon their net receipts. Foreign casualty companies, Lloyds and unincorporated associations pay a tax of 2% on their gross premiums under the Privilege Tax Act of 1919 (Cahill's Illinois Revised Statutes, 1933, Chapter 73, Paragraph 79), for the privilege of transacting business in Illinois. *Foreign fire insurance companies likewise pay this tax.* There is no other tax imposed upon foreign casualty insurers, and since the decision in *Fidelity and Casualty Company* v. *Board of Review,* 264 Ill. 11, they have never paid any tax upon their net receipts, nor have they ever been subjected to any equivalent tax of any kind.

The discrimination approved by the Supreme Court of Illinois violates the rule of uniformity laid down by this Court in *Hanover Fire Insurance Company* v. *Harding,* 272 U. S. 494. The Supreme Court of Illinois admitted the discrimination, but sustained the taxes upon the following grounds:

1. That the basis of classification between foreign fire insurance companies and foreign casualty insurers was a reasonable one, and that therefore different burdens might be imposed upon the respective classes. (*People* v. *Franklin National Insurance Company,* 343 Ill. 336, at pages 342-345).

2. That if Section 30 of the Act of 1869 was valid when passed, it could not be rendered invalid by any subsequent act of legislature (such as the Casualty Insurance Act), nor by any subsequent construction placed upon it. (*People* v. *Franklin National Fire Insurance Company,* 343 Ill. 336, at page 345; *Hanover Fire Insurance Company* v. *Harding,* 327 Ill. 590, at page 600.)

The Supreme Court of Illinois held, in the case at bar, solely on the basis of an observation made in passing in the opinon of this Court in *Hanover Fire Insurance Company* v. *Harding, supra,* that foreign fire insurance companies must pay taxes on net receipts derived not only from fire, marine and inland navigation company business, but also from insuring against all other hazards. The question was not before this Court for consideration and was not argued and the observation in question was not necessary to a decision of the cause. However, the Supreme Court of Illinois treated it as precluding any further consideration of the construction in that regard to be placed upon Section 30. The result is that foreign fire insurance companies must now pay taxes upon net receipts derived from tornado, theft, explosion, sprinkler leakage, property and automobile insurance, whereas foreign casualty companies and other foreign insurers, under the rule laid down in *Fidelity and Casualty Company* v. *Board of Review, supra,* are exempt from payment upon net receipts derived from the same business. If the Supreme Court of Illinois had construed Section 30 to exclude from the receipts taxable thereunder, those derived from risks other than fire, marine and inland navigation insurance, or had held that foreign casualty insurers were taxable upon their net receipts derived from such business, there would be no discrimination in that instance. The Court adopted neither of these constructions. A foreign fire insurance company must pay on its net receipts from insuring such hazards simply because it is a fire insurance company. A casualty insurance company is exempt simply because it is a casualty insurance company. Thus, the premium derived by a foreign fire insurance company from insuring a building against the hazard of sprinkler leakage is subject to tax; the same premium received by a foreign casualty insurance company,

insuring the same building against the same hazard at the same rate is exempt from tax.

The classification sustained by the Supreme Court rests entirely upon the character of the entity receiving the premium. This Court has many times held that a classification based solely upon the character of the owner of the property sought to be taxed, is unreasonable and arbitrary. Thus, in *Hanover Fire Insurance Company* v. *Harding*, 272 U. S. 494, it was contended in this court by the People that a classification into foreign and domestic fire insurers was a reasonable one. This contention was rejected. The Court said (page 515):

> "By compliance with the valid conditions precedent, the foreign insurance company is put on a level with all other insurance companies of the same kind, domestic or foreign within the state, and tax laws made to apply after it has been so received into the state are to be considered laws enacted for the purpose of raising revenue for the state and must conform to the equal protection clause of the 14th Amendment."

It will be noted that in the opinion of the Court it was expressly stated that foreign insurance companies, once admitted, were to be put on a level with all other insurance companies of the same kind, either domestic *or foreign.*

In *Quaker City Cab Co.* v. *Pennsylvania*, 277 U. S. 389, this Court said, in striking down a statute of the State of Pennsylvania, imposing a tax upon corporations operating taxicabs, from which individuals and partnerships were exempted (page 400):

> "The equal protection clause extends to foreign corporations within the jurisdiction of the state and safeguards to them protection of laws applied equally to all in the same situation. Plaintiff in error is entitled in Pennsylvania to the same protection of equal laws that natural persons within its jurisdiction have a right to demand under like circumstances. *Kentucky Fi-*

nance Corp. v. *Paramount Auto Exch. Corp.*, 262 U. S. 544, 550, 67 L. ed. 1112, 1115, 43 Sup. Ct. Rep. 636. The equal protection clause does not detract from the right of the state justly to exert its taxing power or prevent it from adjusting its legislation to differences in situation or forbid classification in that connection, 'but it does require that the classification be not arbitrary but based on a real and substantial difference having a reasonable relation to the subject of the particular legislation.' *Power Mfg. Co.* v. *Saunders*, 274 U. S. 490, 493, 71 L. ed. 1165, 1167, 47 Sup. Ct. Rep. 678. * * *

"In effect Sec. 23 divides those operating taxicabs into two classes. The gross receipts of incorporated operators are taxed while those of natural persons and partnerships carrying on the same business are not. *The character of the owner is the sole fact on which the distinction and discrimination are made to depend.* The tax is imposed merely because the owner is a corporation. The discrimination is not justified by any difference in the source of the receipts or in the situation or character of the property employed. It follows that the section fails to meet the requirement that a classification to be consistent with the equal protection clause must be based on a real and substantial difference having reasonable relation to the subject of the legislation. *Power Mfg. Co.* v. *Saunders, supra.* No decision of this court gives support to such a classification. 'In no view can it be held to have more than an arbitrary basis. As construed and applied by the state court in this case, the section violates the equal protection clause of the 14th Amendment. See *Railroad Tax case*, 8 Sawy. 238, 13 Fed. 722; *Santa Clara County* v. *Southern P. R. Co.*, 9 Sawy. 165, 18 Fed. 385; *Northern P. R. Co.* v. *Walker*, (C. C.) 47 Fed. 681. The tax cannot be sustained." (Italics ours.)

The case at bar falls squarely within the rule laid down in *Quaker City Cab Co.* v. *Pennsylvania, supra.* The distinction between foreign casualty insurers and foreign fire in-

surers rests solely upon the fact that one is a fire insurance company, while the other is a casualty insurance company. This distinction is illusory and unsubstantial, for as we have pointed out, they insure the same classes of risks under the same conditions, and in direct competition with each other.

The Supreme Court of Illinois, in *People* v. *Franklin National Insurance Company*, 343 Ill. 336, in seeking to distinguish *Quaker City Cab Company* v. *Pennsylvania*, *supra*, said (pages 343-344):

> "In support of its position the defendant relies largely upon a decision of the United States Supreme Court in *Quaker City Cab Co.* v. *Pennsylvania*, 277 U. S. 389, where a statute taxing the receipts of the taxicab business when transacted by a foreign corporation was held unconstitutional because it failed to tax the same character of receipts in the hands of individuals or foreign unincorporated associations. But there are essential differences between that case and the case at bar. The question in the case cited was not one of alleged discrimination between a foreign corporation and a domestic corporation or between one foreign corporation and another foreign corporation, but was one of alleged discrimination between both foreign and domestic corporations on one side and individuals on the other side. The court did not hold the law invalid as to the foreign taxicab company, only, but held it invalid as to the domestic as well as to the foreign company. The laws of Pennsylvania taxed individuals only on their taxicabs and their other property in Pennsylvania. It did not impose upon them any equivalent for the tax imposed upon the gross receipts of the domestic and foreign taxicab companies. There was therefore manifest inequality between the corporations, both domestic and foreign, on the one side and individuals on the other side."

The distinction sought to be made that the discrimination in the *Quaker City Cab case* was in favor of individuals and against corporations, whether foreign or domestic, transacting the same business is without substance. Section 30 imposes a tax upon the net receipts of a foreign fire insurance company, and does not impose the same tax or any like tax upon the net receipts of a foreign casualty company or foreign unincorporated association, transacting the same business under the same conditions, resulting in an inequality as manifest as that between domestic and foreign taxicab corporations on one side, and individual taxicab operators on the other. The point in the *Quaker City Cab Company case* which the Supreme Court of Illinois failed to appreciate was that discrimination for purposes of taxation cannot be made to rest solely upon "the character of the operator." In the *Quaker City Cab case* it was corporations on one side and individuals on the other; in the instant case it is foreign fire insurance companies on one side and foreign individuals and foreign casualty insurance companies on the other. The principle involved is exactly the same.

In *Cumberland Coal Company* v. *Board of Revision*, 284 U. S. 23, this Court struck down a method of assessment of coal lands, under which virgin coal as distinguished from active coal, was assessed upon a different basis. The Court said (page 28):

> "It is established that the intentional, systematic undervaluation by state officials of taxable property of the same class belonging to other owners contravenes the constitutional right of one taxed upon the full value of his property. *Sunday Lake Iron Co.* v. *Wakefield Twp.*, 247 U. S. 350, 62 L. ed. 1154, 38 S. Ct. 495, *supra*; *Sioux City Brdge. Co.* v. *Dakota County*, 260 U. S. 441, 67 L. ed. 340, 28 A. L. R. 979, 43 S. Ct. 190, *supra*; *Raymond* v. *Chicago Union Traction Co.*,

207 U. S. 20, 52 L. ed. 78, 28 S. Ct. 7, 12 Ann. Cas. 757, *supra; Chicago G. W. R. Co.* v. *Kendall*, 266 U. S. 94, 69 L. ed. 183, 45 S. Ct. 55, *supra*. In *Sioux City Bridge Co.* v. *Dakota County*, 260 U. S. at p. 446, 67 L. ed. 343, 28 A. L. R. 979, 43 S. Ct. 190, *supra*, this Court, referring to the dilemma presented by a case where one or a few of a class of taxpayers are assessed at one hundred per cent. of the value of their property pursuant to statutory requirement and the rest of the class are intentionally assessed at a lower percentage, stated the rule to be as follows: 'This Court holds that the right of the taxpayer whose property alone is taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.'

"In applying this principle, the fact that a uniform percentage of assigned values is used, cannot be regarded as important if, in assigning the values to which the percentage is applied, a system is deliberately adopted which ignores differences in actual values so that property in the same class as that of the complaining taxpayer is valued at the same figure (according to the unit of valuation, as for example, an acre) as the property of other owners which has an actual value admittedly higher. Applying the same ratio to the same assigned values, when the actual values differ, creates the same disparity in effect as applying a different ratio to actual values when the latter are the same. If the Commissioners, in the instant case, had taken the basis of one hundred per cent. instead of fifty per cent. of the assigned values but had adopted the same method of assessment by which all the coal in a township (aside from active coal) was assessed at

the same value an acre, despite well known and important differences in value, the result would have been an undervaluation of similar coal belonging to other owners, which would have brought the case of the petitioners within the principle of the decisions cited. In such case, if the petitioners' property had been valued at one hundred per cent. of its actual value, the like property of the other owners, having a higher actual value, would in effect have been valued at less than one hundred per cent. The discrimination is essentially the same, and is equally repugnant to constitutional right, when both assessments are made on the basis of fifty per cent. of assigned values and differences in actual values are deliberately and systematically disregarded. The undervalued property is in effect valued at less than fifty per cent. of its actual value; for example, coal of the same description worth twice as much as that of the Cumberland Coal Company was really valued at twenty-five per cent. of its actual value.

"The petitioners are entitled to a readjustment of the assessments of their coal so as to put these assessments upon a basis of equality, with due regard to differences in actual value, with other assessments of the coal of the same class within the tax district."

In *Iowa-Des Moines National Bank* v. *Bennett*, 284 U. S. 239, this Court held invalid assessments made upon shares of stock in a national bank at a higher rate than the shares of stock in competing domestic corporations were assessed.

In *Liggett Company* v. *Lee*, 288 U. S. 517, this Court in striking down an arbitrary classification, said (page 533):

"The statute lays a tax of a stated sum per store on any given number of stores in the same ownership located within the same county; but if one happens to be in a county other than that in which the remainder are situate, imposes an increased tax not only on the single

one lying in the second county, but on all. Thus if an owner has fourteen stores he may add a fifteenth in the same county and the only additional tax will be in the amount of $10 attributable to the privilege of conducting the new store. But if the new store happens to be in another county the license fee for it will be increased to $15, and that for each of the other fourteen, which have long since been opened and operated in the original county, will be increased from $10 to $15.

"We are unable to discover any reasonable basis for this classification. As we have held, gradation of the tax according to the number of units operated cannot be said to be so unreasonable as to transcend the constitutional powers of the legislature. The addition of a store to an existing chain is a privilege, and an increase of the tax on all the stores for the privilege of expanding the chain cannot be condemned as arbitrary; but an increase in the levy not only on a new store, but on all the old stores, consequent upon the mere physical fact that the new one lies a few feet over a county line, finds no foundation in reason or in any fact of business experience. There is no more reason for adopting the county line as a measure of the tax than there would be for taking ward lines in cities, or arbitrary lines drawn through the state regardless of county boundaries. It is suggested that the license fee for extending operations into a great and populous city, or for doing business upon crowded business streets, should be greater than for the same privilege in a village or a sparsely settled suburb. But the adoption of a county line can have no reference either to density of population, congregation of the buying public, or any other factor bearing upon the choice of a business site."

The case chiefly relied upon by the Supreme Court of Illinois to sustain the classification between foreign fire insurers and foreign casualty insurers was *Florida Cen-*

tral and Peninsular Railway Co. v. *Reynolds*, 183 U. S. 471. In that case, this Court sustained a statute of the State of Florida which required an assessment of omitted taxes upon the property of railroads which had escaped taxation in prior years, without at the same time requiring such assessments upon other property. As this Court pointed out in its opinion (page 480), the fact that railroads as a class might have escaped the payment of taxes for which they were liable justified special measures to enforce their assessment and collection, which the Florida legislature deemed not necessary as to other property. No such question inheres in the case at bar; the discrimination here is between members of the same class, that is, between insurance companies writing the same risks under the same conditions in direct competition with each other.

The classification sustained by the Supreme Court of Illinois does not rest upon differences in the hazards undertaken, the premiums received or upon any other attribute of the business alone. There is no relation between the existence or non-existence of the charter power to write fire insurance warranting the taxation of premiums on automobile, sprinkler leakage, explosion, hail and tornado insurance when written by a fire company, and exempting the same receipts from tax when the same risks are insured against by a casualty insurance company.

(b) If it is now discriminatory, Section 30 of the Act of 1869 cannot be sustained on the ground that it was not invalid at the time of its enactment.

One of the grounds assigned by the Supreme Court of Illinois for sustaining the tax upon the net receipts of foreign fire insurance companies, whereas no such tax was imposed upon the net receipts of foreign casualty insurance companies, was that Section 30 of the Act of 1869, if consti-

tutional when passed, could not be rendered unconstitutional by subsequent legislation or judicial decision. The position so taken by the Court is untenable; the principle that an act though valid when passed may become invalid by reason of subsequent developments, is stated by the Chief Justice in his opinion in *Abie State Bank* v. *Bryan*, 282 U. S. 765, as follows (page 772):

> "As to the first objection, it is sufficient to say that the Bank Guaranty Law was sustained by this court as a police regulation (*Shallenberger* v. *First State Bank, supra; Noble State Bank* v. *Haskell*, 219 U. S. 104, 575, 55 L. ed. 112, 341, 32 L. R. A. (N. S.) 1062, 1065, 31 S. Ct. 186, 299, Ann. Cas. 1912A, 487, 489), and that a police regulation, although valid when made may become, by reason of latter events, arbitrary and confiscatory in operation (*Smith* v. *Illinois Bell Teleph. Co.*, 282 U. S. 133, 162, *ante*, 255, 270, 51 S. Ct. 65; *Allen* v. *St. Louis, I. M. & S. R. Co.*, 230 U. S. 553, 555, 556, 57 L. ed. 1625, 1627, 1628, 33 S. Ct. 1030; *Lincoln Gas & E. L. Co.* v. *Lincoln*, 250 U. S. 256, 268, 63 L. ed. 968, 976, 39 S. Ct. 454). In the *Shallenberger Case*, the suit was brought immediately upon the enactment of the law, and that decision sustaining the law cannot be regarded as precluding a subsequent suit for the purpose of testing the validity of assessments in the light of the later actual experience."

And in *Chastleton Corporation* v. *Sinclair*, 264 U. S. 543, Mr. Justice Holmes said (page 547):

> "A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change, even though valid when passed."

And in *Municipal Gas Company* v. *Public Service Commission*, 225 N. Y. 89, the Court in rejecting the argument that a statute is either valid or invalid when passed, and

might not become so by reason of changed conditions, said (pages 95-96):

"But the argument is that a statute is either valid or invalid at the moment of its making, and from that premise the conclusion is supposed to follow that there is a remedy for present confiscation, but none for confiscation that results from changed conditions. We do not view so narrowly the great immunities of the Constitution, or our own power to enforce them. A statute prescribing rates is one of continuing operation. It is an attempt by the legislature to predict for future years the charges that will yield a fair return. The prediction must square with the facts, or be cast aside as worthless (*Ex parte Young*, 209 U. S. 123, 147, 148). It must square with them in one year as in another, at the beginning but equally at the end. In all such legislation, from the hour of its enactment, there thus inheres the seed of an infirmity which the future may develop. It is the infirmity that always waits upon prophecy; the coming years must tell whether the prophecy is true or false. All that we can say at the outset is that the power to regulate exists. The validity of its exercise depends upon the nicety of the adjustment between forecast and events. This is as true of a regulation which looks forward a year as of one which looks forward a decade or a century. In either case, with differences only of degree, there is a forecast of the future, which must be justified by results. Into every statute of this kind, we are to read, therefore, an implied condition. The condition is that the rates shall remain in force at such times and at such only as their enforcement will not work denial of the right to a fair return. When the return falls below that level, the regulation is suspended. When the level is again attained, the duty of obedience revives. There would be no obscurity about this if the condition were expressed. It is no less binding because it is implied. The Constitution is the supreme law; and statutes are written and enforced in submission to its commands."

The interpretation given Section 30 by the Supreme Court of Illinois, requiring foreign fire insurance companies to pay a tax upon their net receipts derived from all classes of business, and exempting foreign casualty insurance companies from any like tax, results in the imposition of invalid assessments upon foreign fire insurance companies. The appellant and other foreign fire insurers were not required to attempt to bring about the imposition of assessments against net receipts of foreign casualty insurance companies and other foreign insurers. They were entitled to stand upon the invalidity of the arbitrary discrimination practiced against them.

Lawrence v. *State Tax Commission*, 286 U. S. 276.
Iowa-Des Moines National Bank v. *Bennett*, 284 U. S. 239.
Cumberland Coal Co. v. *Board of Revision*, 284 U. S. 23.
Greene v. *Louisville & Interurban Railway Co.*, 244 U. S. 499.

III.

The construction placed upon Section 30 of the Act of 1869 by the Supreme Court of Illinois, denying to foreign fire insurance companies the right to deduct their loss payments from gross receipts in determining their net receipts, when domestic fire insurance companies competing directly, are in fact allowed to deduct their losses, is repugnant to the fourteenth article of amendment to the Constitution of the United States, in that it deprives appellant of the equal protection of the laws.

Section 30 of the Act of 1869 imposes a tax upon the net receipts of foreign fire, marine and inland navigation insurance companies, doing business in Illinois. The Act itself does not define the meaning of the term "net re-

ceipts." In *National Fire Insurance Company* v. *Hanberg*, 215 Ill. 378, the Supreme Court of Illinois held that the term "net receipts" meant gross receipts, less operating expenses, but not less losses paid. (But in *People ex rel.* v. *Fayart*, decided by the Supreme Court of Illinois in 1928, and explained by counsel for appellee (Rec. 5, 6) that Court held Section 30 imposed a net income or net profits tax, and that it was unconstitutional under the principles of *Quaker City Cab Co.* v. *Pennsylvania, supra*). The loss ratio of the appellant during the tax years 1923 to 1927 was not less than forty-five per cent of the gross premiums per year received by it in Cook County (Rec. p. 107).

Domestic insurance companies pay a tax upon real and personal property owned by them on April 1st of each tax year (Cahill's Illinois Revised Statutes, 1933, Ch. 120, pars. 1, 319). Domestic companies in direct competition with foreign fire insurers in Illinois (Rec. 99) are not subject to any tax upon their net receipts and are taxed only upon such property as they have left at the end of the tax year, necessarily after the payment of their operating expenses *and losses*.

The construction of Section 30 of the Act of 1869 prohibiting foreign fire insurers from deducting their losses, while domestic fire insurers in direct competition with them are in effect permitted such reduction, results in a heavy discrimination in favor of domestic insurers, contrary to the rule laid down in *Hanover Fire Insurance Company* v. *Harding*, 272 U. S. 494. It was there settled by this Court that the tax imposed upon foreign fire, marine and inland navigation insurance companies under Section 30 of the Act of 1869, is not a license fee or tax payable by foreign insurers for the privilege of carrying on business in the State of Illinois, and that foreign fire, marine and inland navigation insurance companies, having been admitted to do business in the State of Illinois, are to be placed under

the same, but no greater, burden of taxation than domestic fire insurance companies. The Court said (page 516):

> "We thus reach the question whether a tax imposed upon foreign fire, marine and inland navigation insurance companies on the net receipts of all their business, whether fire, marine, inland navigation or other risks, is a denial of the equal protection of the laws when domestic insurance companies pay no taxes on such net receipts. Under the previous decisions of the supreme court of Illinois, when the net receipts were treated as personal property and the assessment thereon as a personal property tax subjected to the same reductions for equalization and debasement, it might well have been said that there was no substantial inequality as between domestic corporations and foreign corporations, in that the net receipts were personal property acquired during the year and removed by foreign companies out of the state, and could be required justly to yield a tax fairly equivalent to that which the domestic companies would have to pay on all their personal property including their net receipts or what they were invested in. It was this view, doubtless, which led to the acquiescence by the state authorities and the foreign insurance companies in such a construction of Sec. 30 and in the practice under it. But an occupation tax imposed upon 100 per cent of the net receipts of foreign insurance companies admitted to do business in Illinois is a heavy discrimination in favor of domestic insurance companies of the same class and in the same business which pay only a tax on the assessment of personal property at a valuation reduced to one-half of 60 per cent of the full value of that property. It is a denial of the equal protection of the laws."

In *Southern Railway Company* v. *Greene*, 216 U. S. 400, the Court, in holding unconstitutional a so-called franchise tax, levied upon foreign corporations, from which domestic companies were exempted, said:

> "We hold, therefore, that to tax the foreign corporation for carrying on business under the circumstances

shown, by a different and much more onerous rule than is used in taxing domestic corporations for the same privilege, is a denial of the equal protection of the laws, and the plaintiff being in position to invoke the protection of the 14th Amendment, that such attempted taxation under a statute of the state does violence to the Federal Constitution."

And in *Erie Railway Co.* v. *State of New Jersey*, 31 N. J. Law 542, the Court said, in an opinion approved by this Court in *Hanover Fire Insurance Company* v. *Harding*, *supra*, (pages 542-544):

"Considering the question in a theoretical point of view, it would seem to be clear that a state can not tax, for the purpose of revenue, a foreign corporation in a mode different in principle from that in which she can tax one of her own domestic corporations. It is not denied that the corporate existence of a company is recognized, not by right, but of grace in foreign jurisdictions, nor that each government has the competence to refuse to recognize such existence except on its own conditions. The principle is universally acknowledged. Hence laws requiring insurance companies * * * to file bonds and submit to other exactions as a prerequisite to their admission in an incorporated capacity into the state. Such laws, when rightfully made, are evidently mere police regulations, designed to protect the citizens of the state in which they are enacted from loss or imposition, and on this ground their legality can not be drawn into question. But a tax-law, having revenue for its object, is based upon a principle entirely different. The right to tax for revenue is the right of the government to take so much of the property of the person or the company upon whom the tax falls as such government may deem necessary for its public wants. The act of taking the property, therefore, must of necessity be an acknowledgment of the legal status of the person or company whose property is taken. To assert that a company whose property is thus taken, has no rights but such as the government taking it chooses to confer, is to

assert that such company has no title to its property but such as may be conceded to it by the taking power.

"It seems to be utterly inconsistent with legal principles, which have always been deemed axiomatic, to hold that a government can recognize the legal existence of a foreign corporation for the purpose of taxation, and at the same time can deny such legal existence, for the purpose of depriving it of those rights which belong to every individual or company known to the law. Such a doctrine would obviously offer the entire property of a foreign corporation as a prize to the rapacity of any state in whose territories it might be. It is readily to be conceded that a law imposing certain terms upon all foreign corporations, as conditions precedent to their acquisition in this state of the right to act in the unity of their corporate existence would be legal. Such law would prevent foreign persons from doing any legal act in this state as a corporation, but can it be maintained that such law would have the further effect of leaving the property of the company as the spoil of the first taker. * * * If a state, under a tax law, can require a foreign corporation to pay any sums it may please and then may defend itself against the alleged unconstitutionality of such act on the plea that the company taxed has no right but such as of grace may be conferred upon it, no reason is perceived why the general government could not at its pleasure seize the property of all corporations in this country on the ground that incorporated companies have no rights which the law is bound to respect of which are recognized by the Constitution of the United States. A principle involving such results is not admissible."

In *People* v. *Kent, supra, People* v. *Barrett, supra,* and *Hanover Fire Insurance Company* v. *Carr, supra,* the Supreme Court of Illinois construed the tax imposed under Section 30 of the Act of 1869 as a tax imposed upon foreign fire insurance companies for the privilege of carrying on

their business in the State of Illinois, and held that, so considered, the tax was not subject to the incidents of property taxation, as, for example, scaling, debasing and equalizing. This Court held in *Hanover Fire Insurance Company* v. *Harding, supra,* that this was an unconstitutional discrimination in favor of domestic companies who paid on their personal property at a valuation reduced to one-half of the sixty per cent of the full value of their property, whereas foreign insurance companies were taxed upon one hundred per cent of their net receipts. This Court assumed on the basis of the record then before it that if the net receipts of foreign fire insurance companies were scaled, debased and equalized like property in the hands of domestic companies, the resultant tax might not be violative of the Fourteenth Article of Amendment to the Constitution of the United States. This Court did not have before it in the *Hanover case* the narrower question of discrimination arising out of the meaning which had therefore been given the term "net receipts" by the Supreme Court of Illinois. If the Supreme Court of Illinois had construed the term "net receipts" to mean gross receipts, less operating expenses and losses, there would be no discrimination between foreign and domestic companies, but the Supreme Court of Illinois construed the term "net receipts" to mean gross receipts less operating expenses, but not less losses, and herein lies the discrimination which this Court did not have before it in determining the broader questions presented by the record in *Hanover Fire Insurance Company* v. *Harding, supra.*

Under the scheme of taxation of insurance companies in Illinois, foreign fire insurance companies, in addition to the taxes paid by them for the privilege of carrying on the business of insurance in Illinois, are required to pay a tax upon their net receipts, construed by the Supreme Court

as gross receipts less operating expenses, but not less loss payments. Domestic companies are not taxed upon their net receipts as such, but are taxable under the General Revenue Act upon property into which their net receipts have been converted. There remains for assessment under the General Revenue Act only what is left on April 1st of each year, after the deduction of both operating expenses and losses. The loss ratio of foreign fire insurance companies, operating in Cook County, was stipulated to be not less than forty-five per cent of their gross premiums each year from 1923 to 1927, inclusive. (Rec. 107.) The discrimination resulting from the refusal to permit foreign fire insurance companies to deduct their losses may be illustrated by the following table:

Foreign Fire Ins. Co.	Domestic Fire Ins. Co.
GROSS RECEIPTS.	
$1,000,000.00	$1,000,000.00
EXPENSES.	
300,000.00	300,000.00
LOSSES.	
450,000.00 (But not permitted to be deducted under *National Fire Insurance Company* v. *Hanberg, supra.*)	450,000.00
NET RECEIPTS, SUBJECT TO TAX.	
$700,000.00	$250,000.00

The foregoing comparative table illustrates the heavy discrimination to which foreign fire insurance companies are subjected. It was stipulated that domestic companies were not subjected to any tax upon their net receipts, and were assessed upon their other property like other taxpayers. (Rec. 99.) Foreign fire, marine and inland navigation in-

surance companies, in addition to the tax under Section 30, paid a tax for the privilege of doing business in Illinois, and also paid taxes upon all their tangible property in Illinois. Domestic fire insurance companies are subjected to no tax of any kind imposing a burden upon them equal to the burden of the tax in effect imposed upon the amount of the losses paid by foreign companies.

The unconstitutionality of the discrimination complained of was raised in the Circuit Court of Cook County and pressed upon the Supreme Court of Illinois, but was disposed of by that Court with the general statement that the constitutional questions involved had been determined by the prior opinions in *Hanover Fire Insurance Company* v. *Harding, supra,* and *People* v. *Franklin National Insurance Company, supra.* In neither of the cases referred to was the point now under consideration discussed by the Court.

The discrimination arising out of the taxation of foreign fire insurance companies upon their net receipts, without permitting them to deduct their losses, cannot be sustained under the rule laid down in *Hanover Fire Insurance Company* v. *Harding,* 272 U. S. 494. In order to accomplish the substantial equality spoken of in *Hanover Fire Insurance Company* v. *Harding, supra,* the Supreme Court of Illinois must be required to recede from the position taken in *National Fire Insurance Company* v. *Hanberg, supra,* just as, in an attempt to meet the objections pointed out in *Hanover Fire Insurance Company* v. *Harding,* 272 U. S. 494, it overruled *People* v. *Kent, supra, People* v. *Barrett, supra,* and *Hanover Fire Insurance Company* v. *Carr, supra,* in so far as they were inconsistent with the principles laid down by this Court. The taxes assessed against the net receipts of appellant, which was not permitted to deduct its losses in determining its net receipts, whereas domestic fire

insurance companies, in direct competition with it, were permitted so to do, violated the guaranty of the equal protection of the laws afforded by the Fourteenth Article of Amendment to the Constitution of the United States.

IV.

The judgment of the Supreme Court of Illinois sustaining the assessment of the Board of Review of Cook County against appellant for the tax year 1927 deprives appellant of its property without due process of law, and is a denial of the equal protection of the laws.

All the constitutional objections to the assessments made for 1923 to 1926, inclusive, apply equally to the tax assessed by the Board of Review for 1927, but there are additional questions affecting the validity of the 1927 tax. All assessments for the five years in question were made at one time by the Board of Review in 1928. They followed the serving of notices by the Board of Review upon appellant and other foreign companies in November, 1927, requiring such companies to file new returns of net receipts from the year 1869 to and including 1927 (Rec. p. 120). This, in spite of the fact that by stipulation it appears from the record that appellant and the other companies in interest had filed sworn annual returns with the Board of Assessors and Board of Review for each of the years in question, and that assessments had been made for each such years. (Rec. 105.) Nevertheless, the Board of Review disregarding that fact, made new assessments for the same years in 1928. It appears by stipulation that appellant and other companies interested did not even know of the making of such new assessments until they were served with summons in actions of debt to collect the amount of such taxes (Rec. 107).

It appears further that for each of said tax years in question not less than two, and in some cases three, independent assessments of the same net receipts had been made by the Board of Assessors and the Board of Review, in some cases treating the net receipts under the head of "Credits," in other cases under the head of "Personal property" and in still other cases under the head of "Net Receipts" or "Omitted Net Receipts" (Rec. 11, 105).

The Supreme Court of Illinois, in the second *Hanover* decision, 327 Ill. 590, required that the assessing authorities in Illinois treat net receipts in all respects like other personal property. In 1927, the full fair cash value of all other taxable property was taken at sixty per cent of such full value for assessment purposes. (Rec. 9, 19.) Such debasement to sixty per cent has been a recognized rule of valuation in Illinois for so many years that both the State Tax Commission and the Supreme Court of Illinois have required it. In the early case of *Board of Supervisors of Bureau County* v. *Chicago, Burlington & Quincy R. R. Company*, 44 Ill. 229, the rule as to debasement was announced as follows (page 239):

> "The rule adopted by the assessors in this State has grown into a custom, and has been tacitly sanctioned by every department of the government for a long course of years, and it is now too late to challenge it. * * *
>
> "It is an admitted fact on both sides to this controversy, that the property of no one owner in the county of Bureau has been taxed on its real value, and that the per cent added by the board of supervisors to the valuation of the property of appellees imposes on them a greater proportionate burden than the law requires them to bear. We are of this opinion, and therefore consider the action of the board unfounded in justice, and in direct opposition to the Constitution. The great and attractive feature of uniformity has been disregarded by the board, and appellees victimized."

In *People* v. *Board of Review*, 326 Ill. 124, it was said (pages 138-139):

> "This court quoted from the annual report of the Illinois Tax Commission in *People* v. *Stewart*, 315 Ill. 25, 'It is to be remembered that under the law, in each instance, every piece and part and parcel of property, whether real or personal, including moneys and credits, should be taken at its full, fair cash market value by the assessing authorities, and by reason of custom and such general use as to become a rule which every taxpayer is entitled to the benefit of, sixty per cent of such full value thus determined should be taken for the full equalized value to which the tax rate will be applied.' It thus appears that from uniform practice and judicial construction assessments for taxing properties should be equalized."

This Court has repeatedly held that an assessment is unconstitutional and void where the tax assessing bodies have generally assessed other like property at a certain percentage of its fair cash, market value, but have failed so to assess the property of the complaining taxpayer. Thus, in *Sioux City Bridge Company* v. *Dakota County, Nebraska*, 260 U. S. 441, this Court reversed a judgment of the Supreme Court of Nebraska, for the reason that the property of the Sioux City Bridge Company was assessed at its full value, while all other property in the county was assessed at only 55/100ths of its full value. The Court said, speaking through Mr. Chief Justice Taft (page 445):

> "In the case of *Sunday Lake Iron Co.* v. *Wakefield Twp.*, 247 U. S. 350, 352, 353, 62 L. Ed. 1154-1156, 38 Sup. Ct. Rep. 495, this Court said:
>
> " 'The purpose of the equal protection clause of the 14th Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly

constituted agents. And it must be regarded as settled that intentional, systematic under-valuation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20, 35, 37, 52 L. Ed. 78, 87, 88, 28 Sup. Ct. Rep. 7, 12 Ann. Cas. 757. Analogous cases are *Greene* v. *Louisville & Interurban R. Co.*, 244 U. S. 499, 516-518, 61 L. Ed. 1280, 1289, 1290, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917E, 88; *Cummings* v. *Merchants' Nat. Bank*, 101 U. S. 153, 160, 25 L. Ed. 903, 905; *Taylor* v. *Louisville & N. R. Co.*, 31 C. C. A. 537, 60 U. S. App. 166, 88 Fed. 350, 364, 365, 372, 374; *Louisville & N. R. Co.* v. *Bosworth*, 209 Fed. 380, 452; *Washington Water Power Co.* v. *Kootenai County*, 270 Fed. 369, 374. * * *

"This Court holds that the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. In substance and effect, the decision of the Nebraska supreme court in this case upholds the violation of the 14th Amendment to the injury of the Bridge Company. We must, therefore, reverse its judgment."

In *Raymond* v. *Chicago Union Traction Company*, 207 U. S. 20, this Court, in affirming a decree, enjoined the collection of a tax based on a discriminatory assessment made by the State Board of Equalization. The Court said (pages 36-37):

"The case before us is one which the facts make exceptional. It is made entirely clear that the board

of equalization did not equalize the assessments in the cases of these corporations, the effect of which was that they were levied upon a different principle or followed a different method from that adopted in the case of other like corporations whose property the board had assessed for the same year. It was not the mere action of individuals, but, under the facts herein detailed, it was the action of the state, through the board. There is here no contention of illegality simply because of assessing the franchises of these corporations at a different rate from tangible property in the state, which the state might do (*Coulter* v. *Louisville & N. R. Co.*, 196 U. S. 599, 49 L. ed. 615, 25 Sup. Ct. Rep. 342), but it is asserted that the board assessed the franchises and other property of these companies at a different rate and by a different method from that which had been employed by the board for other corporations of the same class for that year. The result is an enormous disparity and discrimination between the various assessments upon the corporations. The most important function of the board, that of equalizing assessments, in order to carry out the provisions of the Constitution of the state in levying a tax by valuation, 'so that every person shall pay a tax in proportion to the value of his, her, or its property,' was, in this instance, omitted and ignored, while the board was making an assessment which it had jurisdiction to make under the laws of the state. This action resulted in an illegal discriminatiton which, under these facts, was the action of the state through the board."

In the recent case of *Cumberland Coal Company* v. *Board of Revision*, 284 U. S. 23, 52 Supreme Ct. 48, this Court again fully reviewed the authorities bearing on this question, and speaking through the Chief Justice, said (pages 28-29):

"It is established that the intentional, systematic undervaluation by state officials of taxable property of the same class belonging to other owners contravenes

the constitutional right of one taxed upon the full value of his property. *Sunday Lake Iron Co.* v. *Wakefield Twp.*, 247 U. S. 350, 62 L. Ed. 1154, 38 S. Ct. 495, *supra*; *Sioux City Bridge Co.* v. *Dakota County*, 260 U. S. 441, 67 L. ed. 340, 28 A. L. R. 979, 43 S. Ct. 190, *supra*; *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20, 52 L. ed. 78, 28 S. Ct. 7, 12 Ann. Cas. 757, *supra*; *Chicago G. W. R. Co.* v. *Kendall*, 266 U. S. 94, 69 L. ed. 183, 45 S. Ct. 55, *supra*. In *Sioux City Bridge Co.* v. *Dakota County*, 260 U. S. at p. 446, 67 L. ed. 343, 28 A. L. R. 979, 43 S. Ct. 190, *supra*, this Court referring to the dilemma presented by a case where one or a few of a class of taxpayers are assessed at one hundred per cent. of the value of their property pursuant to statutory requirement and the rest of the class are intentionally assessed at a lower percentage, stated the rule to be as follows: 'This Court holds that the right of the taxpayer whose property alone is taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law'."

And in *Iowa-Des Moines National Bank* v. *Bennett*, 284 U. S. 239, the Court said, speaking through Mr. Justice Brandeis (pages 245-246):

"Both petitioners claim that they have been subjected to intentional, systematic discrimination in violation of the equal protection clause of the 14th Amendment. The federal right of the Central State Bank rests wholly upon that clause. It is assumed that there was such inequality of treatment as the Constitution prohibits. *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20, 37, 52 L. ed. 78, 82, 28 S. Ct.

7, 12 Ann. Cas. 737; *Sioux City Bridge Co.* v. *Dakota County*, 260 U. S. 441, 446, 67 L. ed. 340, 343, 28 A. L. R. 979, 43 S. Ct. 190; *Cumberland Coal Co.* v. *Board of Revision*, Nos. 7-13, October Term, 1931, decided November 23, 1931 (284 U. S. 23, *ante*, 146, 52 S. Ct. 48). Compare *Sunday Lake Iron Co.* v. *Wakefield Twp.*, 247 U. S. 350, 353, 62 L. ed. 1154, 1156, 38 S. Ct. 495. But the Iowa court, without denying the lack of power of the State to authorize the discrimination effected, holds that such discrimination does not violate the federal Constitution because it resulted from the act of private individuals and not of the State. The prohibition of the 14th Amendment, it is true, has reference exclusively to action by the State, as distinguished from action by private individuals. *Virginia* v. *Rives*, 100 U. S. 313, 318, 25 L. ed. 667, 669, 3 Am. Crim. Rep. 524; *United States* v. *Harris*, 106 U. S. 629, 639, 27 L. ed. 290, 294, 1 S. Ct. 601. But acts done 'by virtue of a public position under a State Government * * * and in the name and for the State,' *Ex parte Virginia*, 100 U. S. 339, 347, 25 L. ed. 676, 679, 3 Am. Crim. Rep. 547, are not to be treated as if they were the acts of private individuals, although in doing them the official acted contrary to an express command of the state law. When a state official, acting under color of state authority, invades, in the course of his duties, a private right secured by the federal Constitution, that right is violated, even if the state officer not only exceeded his authority but disregarded special commands of the state law."

In *Central Railroad Company of New Jersey* v. *Martin*, 65 Fed.(2d) 613, the Circuit Court of Appeals for the Third Circuit, in awarding an injunction against the assessment of a tax on the basis of a 100% valuation of the complainant's property, whereas all other property was assessed at 65% of its value, said (page 614):

"Such violation existing, the right is to have the discriminatory assessment of 100 per cent. reduced to

the 65 per cent. level of other taxpayers, or, as the Supreme Court, citing *Taylor* v. *Louisville & N. R. Co.*, (C. C. A.) 88 F. 350, and *Greene* v. *Louisville & I. R. Co.*, 244 U. S. 499, 37 S. Ct. 673, 61 L. Ed. 1280, Ann. Cas. 1917E, 88, held in *Sioux City Bridge Co.* v. *Dakota County*, 260 U. S. 446, 43 S. Ct. 190, 192, 67 L. Ed. 340, 28 A. L. R. 979: 'This court holds that the right of the taxpayer whose property alone is taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed.' Later on it was held in *Iowa-Des Moines Nat. Bank* v. *Bennett*, 284 U. S. 239, 52 S. Ct. 133, 136, 76 L. Ed. 265: 'The right invoked is that to equal treatment; and such treatment will be attained if either their competitors' taxes are increased or their own reduced. But it is well settled that a taxpayer who has been subjected to discriminatory taxation through the favoring of others in violation of federal law cannot be required himself to assume the burden of seeking an increase of the taxes which the others should have paid. *Cumberland Coal Co.* v. *Board of Revision*, (284 U. S. 23, 52 S. Ct. 48, 76 L. Ed. 146), *supra; Greene* v. *Louisville & I. R. Co.*, 244 U. S. 499, 514-518, 37 S. Ct. 673, 61 L. Ed. 1280, Ann. Cas. 1917E, 88; *Chicago Great Western Ry. Co.* v. *Kendall*, 266 U. S. 94, 96, 98, 45 S. Ct. 55, 69 L. Ed. 183; *Sioux City Bridge Co.* v. *Dakota County*, (260 U. S. 441, 43 S. Ct. 190, 67 L. Ed. 340, 28 A. L. R. 979), *supra*. Nor may he be remitted to the necessity of awaiting such action by the state officials upon their own initiative. *Montana National Bank* v. *Yellowstone County*, (276 U. S. 499, 48 S. Ct. 331, 72 L. Ed. 673), *supra*.' "

The method of making the 1927 assessment in 1928 was the following: The Board of Review took the gross receipts returned, and instead of deducting the actual operating expenses shown under oath by appellant's return (in the case of appellant fifty-four per cent of gross receipts), deducted 30% of the aggregate gross receipts to cover operat-

ing expenses and extended the remainder without debasement, scaling or equalization as the estimated net receipts for the year 1927. (Rec. 12, 13.) Seeley, who calculated the assessments for the Board of Review, was a witness upon the trial of the instant case. He sought to explain the failure to debase appellant's net receipts to sixty per cent for 1927 by saying that in his opinion if appellant had returned its net receipts from premiums on hazards other than fire, marine and inland navigation, such gross receipts would have been about twenty-five per cent greater than those returned, and that such increase by twenty-five per cent of the returned gross receipts was equivalent to an equalization with all other property in Cook County for the year 1927. (Rec. 135.) It was not claimed by the appellee that the estimated net receipts were debased to sixty per cent like all other property, but that the failure to increase the gross receipts by twenty-five per cent afforded some equivalent of debasement to sixty per cent of omitted net receipts. This is not so. If, as is claimed, the Board had assumed that the gross receipts of appellant ($165,670) represented seventy-five per cent of the gross receipts from all classes, such gross receipts from all classes would have been $220,888. Deducting expenses at thirty per cent (the Board's allowance) leaves net receipts of $154,622, which if debased to sixty per cent as was all other property leaves net receipts of $92,773.20 subject to tax. The amount entered on the books was $121,550, which demonstrates that the Board of Review, on the basis of its own assumptions, never accorded appellant the debasement to sixty per cent to which it was entitled.

The Supreme Court of Illinois, in deciding the instant case, rejected the assessments of the Board of Review for the years 1923 to 1926, inclusive, on the ground that the Board had no right to make assessments of so-called "omitted net re-

ceipts'' for such years where it had already exercised its discretion in acting upon sworn returns tendered by the companies and making assessments upon them, but for the year 1927, the Supreme Court of Illinois sustained the assessment made by the Board of Review on the ground that it was currently reviewing such assessment for that year and not making an assessment of so-called ''omitted net receipts.'' The Court cited a number of decisions to the point that equity will not relieve against an excessive valuation, where the taxpayer fails or refuses to appear before the assessing bodies. Appellant does not question this principle but it has no application to the facts in the case at bar. Waiving the question of the power of the Board of Review to estimate net receipts for 1927 at $121,550, appellant contends that once having made any estimate, the Board was required to debase it to sixty per cent like all other property. The Supreme Court of Illinois, in its opinion in the case at bar, passed over in silence this complaint of appellant. Thus, the rule for equality of taxation under Section 30, announced by this Court in *Hanover Fire Insurance Company* v. *Harding*, 272 U. S. 494, was violated by the Board of Review in making the assessment for the year 1927, in 1928.

The Supreme Court of Illinois stated that the power of the Board of Review to make an ''estimate'' assessment for 1927 existed because of the failure of appellant to make its return for 1927 upon a form (called Form 16) promulgated by the State Tax Commission. It was admitted by counsel for appellee in his opening statement (Rec. 4-6) that the Supreme Court of Illinois had before it in 1928 an original mandamus case entitled *People, ex rel.* v. *Fayart*, in which the constitutional validity of Form 16 and of Section 30 in connection therewith was before the court for decision; that the court in an unanimous opinion

announced by Justice Duncan, occupying forty printed pages, decided in 1928 that both Form 16 and Section 30 were unconstitutional and void as depriving the foreign stock fire insurance company of the equal protection of the laws under the Fourteenth Amendment; that, after the opinion had been filed, a rehearing of the question was granted by the Court and immediately after such rehearing was allowed counsel for the People dismissed the original mandamus suit out of the Supreme Court of Illinois, and thereby prevented the unanimous opinion of the court from becoming effective. It appears further from the record (Rec. 105) that returns in the form of affidavit, showing gross receipts, operating expenses and net receipts, were accepted by the taxing authorities in lieu of any other form of return during the period of litigation involving the validity of Section 30. In view of the uncertainty as to the validity of Section 30 and Form 16 during 1927 and 1928, it was manifestly arbitrary to penalize appellant for not using Form 16 when the taxing bodies themselves had accepted the form of return submitted by the companies. However, quite apart from any such question, the assessment made by the Board of Review upon net receipts, without scaling or debasing, was in violation of the requirement of constitutional uniformity.

Had the value of net receipts for 1927, as estimated, been debased to 60%, the amount of such tax would have been $3,537.11 (the rate appearing by stipulation at 4.85 (Rec. 105)), as contrasted with an actual tax imposed for that year of $5,895.19. The arbitrary allowance of 30% for operating expenses appearing from the record should not be confused with debasement of the net receipts to 60%, to which appellant was entitled. The tax under Section 30 is a tax on net receipts, that is, gross receipts less operating expenses. The arbitrary allowance of only 30% was,

of course, a part of the calculation of net receipts without in any way being related to the debasement to 60% required by constitutional uniformity. *Once the net receipts were arrived at by any method, appellant was entitled to have the calculated amount debased to 60% like all other personal property in Cook County for the year 1927.* The failure of the Board of Review to debase its estimate and the refusal of the Supreme Court of Illinois to rectify the error resulted in the imposition of a tax against appellant approximately 40% greater than would have been imposed if its net receipts had been debased like other personal property.

CONCLUSION.

Upon the foregoing considerations, we respectfully submit that the judgment hereunder reviewed should be reversed on the grounds that

(*a*) Section 30 of the Act of 1869, construed as a property tax, is unconstitutional and void;

(*b*) An arbitrary discrimination and an illusory classification exists where a tax for revenue is laid upon appellant, while foreign casualty corporations, foreign associations, individuals, groups of individuals, and Lloyds, are permitted to compete in the writing of various classes of hazards directly with appellant in the same territory under the same conditions and at the same rates of premium and are exempted from the payment of any net receipts taxes upon premiums from such insurances, and from any similar or equivalent tax;

(*c*) Because appellant is taxed upon the net receipts derived from all classes of hazards insured and is denied

the right to deduct the insurance losses paid by it in arriving at the amount of its net receipts, while domestic insurance companies directly competing in the same territory in writing the same hazards at the same rates are taxed only upon what they have left on April 1st of each year, after deducting their operating expenses, paid losses, and all other business expenses, and pay no similar or equivalent tax;

(*d*) Because appellant was assessed on its estimated net receipts for the year 1927 at the full amount of such estimate without debasing the same to 60%, while the full fair cash value of all taxable property in Cook County for said year was uniformly debased to 60% as its assessed value;

(*e*) That whether the tax under Section 30 be in fact an excise tax or a property tax, the respective discriminations practiced against appellant in the foregoing particulars violated the constitutional rights of appellant under the guaranties of the Fourteenth Amendment and render all the taxes imposed for the years 1923 to 1927, inclusive, null and void.

Wherefore, appellant respectfully prays that the judgment of the Supreme Court of Illinois be reversed.

Respectfully submitted,

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APPENDIX I.

RELEVANT STATUTES QUOTED.

A.

Revenue Act of 1853.

Laws of 1853, pages 1, 14:

AN AGT for the assessment of property, and the collection of taxes, in counties adopting the township organization law.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all property, whether real or personal, in this state; all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, of persons residing in this state, or used or controlled by persons residing in this state; the property or corporations now existing or hereafter created, and the property of all banks, or banking companies, now existing, or hereafter created, and of all bankers and brokers, except such property as is hereinafter expressly exempted, shall be subject to taxation; and such property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, or the value thereof, shal be entered on the list of taxable property, for that purpose, in the manner prescribed in this act. * * *

Section 22. * * * *Provided,* that every agency of an insurance company, incorporated by the authority of any other state or government, shall return to the assessor of the

county in which the office or agency of such company may be kept, in the month of May, annually, the amount of the gross receipts of such agency, which shall be entered on the tax list of the proper county, and subject to the same rate of taxation for all purposes that other personal property is subject to at the place where located.

B.

Relevant Sections of Fire, Marine, and Inland Navigation Insurance Act of March 11, 1869, and Amendments Thereto.

Laws of 1869, pages 209, 220:

AN ACT to incorporate and to govern fire, marine and inland navigation insurance companies doing business in the State of Illinois.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any number of persons, not less than thirteen, may associate and form an incorporated company for the following purposes, to-wit: To make insurance on dwelling houses, stores, and all kinds of buildings, and upon household furniture and other property, against loss or damage by fire, and the risks of inland navigation and transportation. Any and all insurance companies hereafter incorporated under the provisions of this act, which shall, in the declaration and charter provided to be filed, have expressed an intention to make insurance, or which shall have power to make insurance against loss or damage by the risks of inland navigation or transportation, shall have power to make insurance upon vessels, boats, cargoes, goods, merchandise, freights, and other property against loss and damage by all or any of the risks of lake, river, canal, and inland navigation and transportation.

Sec. 22. It shall not be lawful for any insurance company, association, or partnership incorporated by or organized under the laws of any other state of the United States, or any foreign government, for any of the purposes specified in this act, directly or indirectly, to take risks or transact any business of insurance in this state unless possessed of the amount of actual capital required of similar companies formed under the provisions of this act; and any such company desiring to transact any such business, as aforesaid, by any agent or agents in this state shall first appoint an attorney in this state on whom process of law can be served, and file in the office of the auditor of public accounts a written instrument, duly signed and sealed, certifying such appointment, which shall continue until another attorney be substituted; and any process issued by any court of record in this state, and served upon such attorney by the proper officer of the county in which such attorney may reside or may be found, shall be deemed a sufficient service of process upon such company, but service of process upon such company may also be made in any other manner now provided by law.

Sec. 30. Every agent of any insurance company, incorporated by the authority of any other State or government, shall return to the proper officer of the county, town or municipality in which the agency is established, in the month of May, annually, the amount of the net receipts of such agency for the preceding year, which shall be entered on the tax lists of the county, town and municipality, and subject to the same rate of taxation, for all purposes—State, county, town and municipal—that other personal property is subject to at the place where located; said tax to be in lieu of all town and municipal licenses; and all laws and parts of laws inconsistent herewith are hereby repealed: *Provided*, that the provisions of this section shall

not be construed to prohibit cities having an organized fire department from levying a tax, or license fee, not exceeding two per cent. in accordance with the provisions of their respective charters, on the gross receipts of such agency, to be applied exclusively to the support of the fire department of such city.

As amended by L. 1879, p. 179.

C.

Insurance against Lightning Authorized.

Laws of 1879—pages 178-179.

AN ACT to amend section one (1) of an act entitled "An act to incorporate and to govern fire, marine and inland navigation insurance companies doing business in the State of Illinois," approved March 11, 1869, and to fix the liability of certain insurance companies organized under said act. Approved May 31, 1879. In force July 1, 1879.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That section one (1) of an act entitled "An act to incorporate and to govern fire, marine and inland navigation insurance companies doing business in the State of Illinois," approved March 11, 1869, be and the same is hereby amended so as to read as follows:

Sec. 1. (Who may incorporate—Purposes.) That any number of persons, not less than thirteen, may associate and form an incorporated company for the following purposes, to-wit: To make insurance on dwelling houses, stores and all kinds of buildings, and upon household furniture

and other property, against loss or damage by fire or lightning, and the risks of inland navigation and transportation. Any and all insurance companies hereafter incorporated under the provisions of this act, which shall, in the declaration and charter provided to be filed, have expressed an intention to make insurance, or which shall have power to make insurance against loss or damage by the risks of inland navigation or transportation, shall have power to make insurance upon vessels, boats, cargoes, goods, merchandise, freights and other property against loss and damage by all or any of the risks of lake, river canal and inland navigation and transportation.

Sec. 2. (Authority to companies already incorporated.) Any company heretofore incorporated under the provisions of this act which shall, in the declaration and charter filed in accordance with the provisions of said act, have expressed an intention to make insurance against loss or damage by fire, is hereby authorized to insure, also, against loss or damage by lightning; and in all cases wherein any such company has heretofore insured against loss or damage by lightning such insurance shall be binding on such company.

Approved May 31st, 1879.

D.

Insurance against Tornadoes Authorized.

Laws of 1881—page 85.

AN ACT to amend Sections one (1) and two (2), of "An Act to amend Section one (1) of an act entitled 'An Act to incorporate and to govern Fire, Marine and Inland Navigation Insurance Companies doing business in the

State of Illinois,' approved March 11, 1869, and to fix the liability of certain Insurance Companies, organized under said Act," approved May 31, 1879. Approved May 25, 1881. In force July 1, 1881.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That sections one (1) and two (2) of an act entitled "An act to amend section one (1) of an act entitled 'An Act to incorporate and to govern fire, marine and inland navigation insurance companies, doing business in the State of Illinois,' approved March 11, 1869, and to fix the liability of certain insurance companies organized under said act," approved May 31, 1879, be amended so as to read as follows:

1. Who may incorporate—Purposes.) Sec. 1. That any number of persons, not less than thirteen (13), may associate and form an incorporated company for the following purposes, to wit: To make insurance on dwelling houses, stores, and all kinds of buildings, and upon household furniture and other property, against loss or damage by fire, lightning and tornadoes, or either or any of said causes, and the risks of inland navigation and transportation: any and all insurance companies hereafter incorporated under the provisions of this act, which shall in the declaration and charter provided to be filed have expressed an intention to make insurance, or shall have power to make insurance against loss or damage by the risks of inland navigation or transportation, shall have power to make insurance upon vessels, boats, cargoes, goods, merchandise, freights, and other property, against loss or damage by all or any of the risks of lake, river, canal and inland navigation and transportation.

2. Authority to companies already incorporated.) Sec. 2. Any company heretofore incorporated under the provi-

sions of said act, or the act of which said act was an amendment, which shall in the declaration and charter filed in accordance with the provisions of said act, approved March 11, 1869, or said act approved May 31, 1879, have expressed an intention to make insurance against loss or damage by fire, or by fire and lightning, is hereby authorized to insure against loss by fire, lightning and tornadoes, or either or any of said causes; and in all cases wherein any such company has heretofore insured against loss or damage from either, any, or all, of said causes, such insurance shall be binding on such company.

E.

Insurance against Windstorms, Hailstorms and Cyclones Authorized.

Laws of 1885, pages 209, 210.

AN ACT authorizing fire insurance companies to insure against loss or damage by lightning, wind-storms, hail-storms, tornadoes, and cyclones.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That all insurance companies heretofore organized under any law or laws of the State of Illinois, having power to make insurance against loss by fire, are hereby authorized to insure houses, buildings, growing crops, live stock, and other property against loss or damage by lightning, wind-storms, hail-storms, tornadoes and cyclones, or either or all of them: *Provided*, the same shall be clearly expressed in the policies.

Approved, June 30, 1885.

F.

Casualty Act of 1899 as Amended.

AN ACT concerning the business of casualty insurance. Approved April 21, 1899. In force July 1, 1899. L. 1899, p. 237. Title as amended by L. 1919, p. 601, June 30, July 1.

Who may form—Purposes.) Section 1. Any number of persons, not less than thirteen, may, in the manner hereinafter prescribed, form a corporation for the purpose of issuing policies for any of the following kinds of insurance business:

First—Insuring any persons against bodily injury, disablement or death resulting from accident, and providing benefits for disability caused by disease.

Second—Insuring against loss or damage resulting from accident to, or injury suffered by, an employee or other person for which accident or injury the person insured is liable.

Third—To guarantee or indemnify merchants, traders and all others engaged in business and giving credit therein from loss or damage by reason of giving or extending credit to their customers.

Fourth—Against loss by burglary of theft or both.

Fifth—Upon glass against breakage.

Sixth—Upon steam boilers and pipes, engines and machinery connected therewith or operated thereby; against explosion and accident and loss or damage to life or property resulting therefrom and to make inspection of and to issue certificates of inspection upon such boilers and pipes,

engines and machinery; also upon elevators and machinery forming a part thereof and to make inspection and to issue certificates of inspection upon the same.

Seventh—Insuring against any hazard resulting from the ownership, maintenance or use of any automobile or other vehicle.

Eighth—Against any other casualty or insurance risk specified in the articles of organization, which may lawfully be the subject of insurance and the formation of corporations for insuring against which is not otherwise provided for by these statutes.

Note—As amended by L. 1921; p. 472, June 28, July 1.

Sec. 2. Any casualty insurance corporation organized under the laws of any other state or foreign country may be admitted to transact business in this State by filing with the insurance superintendent for his approval, the following documents and papers:

First—An application for license to do business in this State, setting forth the full name of the corporation, the location of its principal office of business, and separately, the several kinds of business to be transacted; said application shall contain the declaration prescribed in an act entitled "An Act for the better regulation of the business of insurance, and for the protection of the citizens of this State in their dealing with insurance companies," approved June 4th, 1879, in force July 1st, 1879, and otherwise conform to the requirements of said act, and such company shall also be subject to all the provisions, requirements and penalties of said act upon such form of blank as the said superintendent may prescribe.

Second—A certificate of deposit from the state official having the custody of the securities showing to the satis-

faction of said insurance superintendent that the corporation has the amount of funds required by this act to be deposited by companies incorporated in this State invested in securities deposited with the superintendent of the insurance department, State Treasurer or other proper officer of the state in which it is incorporated, if incorporated in the United States, and if a foreign corporation, then in some one of the states of the United States that such securities are not pledged or incumbered and have a market value of at least one hundred thousand dollars, but are held and remain for the benefit and security of the policy-holders of such corporation residing in the United States, or in default of such certificate of deposit shall deposit with the insurance superintendent for the benefit and security of its policy-holders the amount and kind of securities required to be deposited by companies of this State. The stocks and securities so deposited may be exchanged from time to time for other securities, to be approved by the insurance superintendent and so long as the corporation so depositing shall continue solvent and comply with the laws of this State, it may be permitted by the insurance superintendent to collect the interest or dividends on said securities.

Third—A duly certified copy of its charter and by-laws together with a certificate from the insurance superintendent or other proper officer of the state wherein incorporated, that the corporation is duly organized and licensed to transact the business of casualty insurance in such state, stating separately the different kinds of insurance, as provided in section 1 of this act, together with an appointment of the insurance superintendent of this State, and his successors in office, as attorney upon whom any summons, notice or process of any court of this State may be served.

Fourth—*A Complete Statement of the Financial Condition of the Corporation.*) All such corporations admitted to transact business in this State must comply with the laws governing like corporations organized under the laws of this State, except that such corporations as are at the date of the passage of this act admitted to transact in this State more than four of the kinds of business named in subdivisions of Section 1 hereof, may continue such business on a capital of not less than two hundred thousand dollars, and all such corporations and all persons acting as agents thereof shall be subject to the same penalties prescribed by these statutes relating thereto for a violation of any of the provisions thereof and to the same methods for the enforcement of such penalties. The said company shall apply annually to the insurance superintendent for a certificate for each of its agents to do business in this State.

G.

Insurance against Damage by Sprinkler Leakage and Fire Apparatus Authorized.

Laws of 1905, page 290.

AN ACT authorizing fire insurance companies to insure sprinklers, pumps or other fire apparatus, and also to insure against loss or damage by the same.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That all insurance companies authorized to transact fire insurance business in the State may, in addition to the business which they are now authorized by law to do, insure sprinklers, pumps, and other apparatus, erected, used or put in position for the purpose of extinguishing fires, against damage

or loss or injury resulting from any cause whatsoever; and may also insure any property which such companies are authorized to insure against loss or damage by fire, against damage, loss or injury by water or otherwise, resulting from the breaking of or injury to such sprinklers, pumps or other apparatus, or from the use or operation of the same, arising from any cause whatever, upon filing with the Insurance Department of the State of Illinois official notification of their purpose so to do: Provided, the same shall be clearly expressed in the policies.

Approved, May 16, 1905.

H.

Insurance on Motor Vehicles Authorized.

Laws of 1911-1912, First, Second and Third Special Sessions, pages 45-46:

AN ACT to amend section one of an Act entitled, "An Act to incorporate and govern fire, marine and inland navigation insurance companies doing business in the State of Illinois", (approved and in force March 11, 1869, as amended by Act approved May 25, 1881, in force July 1, 1881), by adding a sub-section to be known as section 1-a.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That section 1 of an Act entitled "An Act to incorporate and govern fire, marine and inland navigation insurance companies doing business in the State of Illinois," approved and in force March 11, 1869, as amended by Act approved May 25, 1881, in force July 1, 1881, be and the same is hereby amended by adding to the said section 1 a sub-section to be known as

section 1-a, so that said section 1 as amended shall read as follows:

Sec. 1. That any number of persons, not less than thirteen (13), may associate and form an incorporated company for the following purposes, to-wit: To make insurance on dwelling houses, stores, and all kinds of buildings, and upon household furniture and other property, against loss or damage by fire, lightning and tornadoes, or either or any of said causes, and the risks of inland navigation and transportation. Any and all insurance companies hereafter incorporated under the provisions of this Act which shall, in the declaration and charter provided to be filed have expressed an intention to make insurance, or shall have power to make insurance against loss or damage by the risks of inland navigation or transportation, shall have power to make insurance upon vessels, boats, cargoes, goods, merchandise, freights and other property, against loss and damage by all or any of the risks of lake, river, canal and inland navigation and transportation.

Sec. 1-a. That all insurance companies authorized to transact the business of fire, marine or inland navigation insurance in this State, may, in addition to the business which they are now authorized by law to do, insure automobiles or other motor vehicles, whether stationary or being operated under their own power, against all or any of the risks of fire, lightning, wind storm, tornadoes, cyclones, explosions, hail storms, transportation by land or by water, theft and collision, upon filing with the Insurance Department of the State of Illinois official notification of their purpose so to do: *Provided*, the same shall be clearly expressed in the policies.

Approved June 11, 1912.

I.

Scope of Transportation Insurance Enlarged.

Laws of 1919, page 613.

AN ACT to amend section 1 of an Act entitled, "An Act to incorporate and to govern fire, marine and inland navigation insurance companies doing business in the State of Illinois", approved and in force March 11, 1869, and as subsequently amended.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That section 1 of an Act entitled, "An Act to incorporate and to govern fire, marine and inland navigation insurance companies, doing business in the State of Illinois", approved and in force March 11, 1869, and as subsequently amended, be amended to read as follows:

Sec. 1. That any number of persons, not less than thirteen (13), may associate and form an incorporated company for the following purposes, to-wit: To make insurance on dwelling houses, stores, and all kinds of buildings, and upon household furniture and other property, against loss or damage by fire, lightning and tornadoes, or either or any of said causes and the risks of inland navigation and transportation. Any and all insurance companies heretofore or hereafter incorporated under the provisions of this Act, which shall, in the declaration and charter provided to be filed, have expressed an intention to make insurance, or shall have power to make insurance against loss or damage by the risks of inland navigation or transportation, shall have power to make insurance upon vessels, boats, cargoes, goods, merchandise, freights, and other property, against loss and damage by all or any of the risks of ocean, lake,

river, canal and inland navigation and transportation, and against loss or damage by explosion, whether fire ensues or not, except upon steam boilers and pipes, fly wheels, engines and machinery connected therewith or operated thereby.

Approved May 21, 1919.

J.

General Revision, whereby Fire, Marine and Inland Navigation Insurance Companies were again Authorized to Insure Against all the Foregoing Hazards, and in Addition to Insure Against Theft of Automobiles and Property Damage Caused by Automobiles.

Laws of 1925, pages 436-438:

AN ACT providing the kinds of business which may be transacted by fire insurance companies; to repeal an Act entitled "An Act authorizing fire insurance companies to insure against loss or damage by lightning, windstorms, hailstorms, tornadoes and cyclones," approved June 30, 1885, in force July 1, 1885, and to repeal an Act entitled "An Act authorizing fire insurance companies to insure sprinklers, pumps, or other fire apparatus, and also to insure against loss or damage by the same", approved May 16, 1905, in force July 1, 1905.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. All domestic insurance companies or insurance companies of other states or foreign governments authorized in this State to transact the business of fire insurance, are hereby empowered and authorized to make contracts of insurance, or to cede or receive reinsurance

thereon, for such of the following kinds of business as are specified in their articles of incorporation, namely:

(1) To make insurances upon property or any valuable interest therein against loss or damage caused by fire, lightning or other electrical disturbances, earthquake, windstorms, cyclone, tornado, tempest, hail, frost, snow, ice, sleet, weather or climatic condition, including excess or deficiency of moisture, flood, rain, or drought; a rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, explosion, other than the explosion of steam boilers, or the breaking of fly wheels; against loss or damage from any cause to trees, crops, and farm products, and against loss or damage to property from any casualty, power to insure against which is not expressly conferred by other provisions of this Act.

(2) To make insurances against loss or damage to property and against the liability of the insured for loss or damage to the property of others caused by water entering through leaks or openings in buildings or from the breakage or leakage of sprinklers, pumps, water pipes, plumbing and all tanks, apparatus, conduits and containers designated to bring water into buildings or for its storage or utilization therein; or caused by the falling of a tank, tank platform or supports and against loss or damage from any cause to such sprinklers, pumps, water pipes, plumbing, tanks, apparatus, conduits, or containers.

(3) To make insurances upon teams, automobiles and all vehicles, airplanes, seaplanes, dirigibles and other aircraft—

(a) Against all loss or damage to the same, their fittings and contents from any cause, including the hazards of burglary, theft or other criminal act, vandalism or malicious mischief.

(b) Against loss or damage to property, including legal liability therefor, caused by the operation, maintenance and use of the same.

(4) To make insurances against loss or damage to vessels, craft, aircraft, automobiles and vehicles of every kind (excluding automobiles operating under their own power or while in storage not incidental to transportation) as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests, and all kinds of property and interests therein in respect to, pertaining to or in connection with any or all risks or perils of navigation, transit or transportation, including war risks, on or under any seas or waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same, or during any delays, storage, trans-shipment or re-shipment incidental thereto; including marine builders' risks, war risks; and for loss or damage to persons or property in connection with or appertaining to marine, inland marine, transit or transportation insurance including loss or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such primary insurance (but not including life insurance or surety bonds); but except as herein specified, shall not mean insurances against loss by reason of bodily injury to the person.

Sec. 2. An Act entitled "An Act authorizing fire insurance companies to insure against loss or damage by lightning, windstorms, hailstorms, tornadoes and cyclones," approved June 30, 1885, in force July 1, 1885, is hereby repealed.

Sec. 3. An Act entitled "'An Act authorizing fire insurance companies to insure sprinklers, pumps, or other fire apparatus, and also to insure against loss or damage by the same,'' approved May 16, 1905, in force July 1, 1905, is hereby repealed.

Approved June 30, 1925.

APPENDIX II.

TABLE SHOWING RECEIPTS FROM CERTAIN CLASSES OF BUSINESS OF FOREIGN FIRE INSURERS AND FOREIGN CASUALTY INSURERS FOR THE YEARS 1923-1927.

Motor Vehicle Insurance.

(Premiums Received in Illinois.)

Year	Foreign Stock Fire Insurance Companies	Foreign Stock Casualty Companies
1923	[1]$5,749,849.31	[2]$3,263,243.51
1924	[3]6,238,131.39	[4]2,415,978.20
1925	[5]6,634,547.17	[6]2,932,631.88
1926	[7]8,067,071.05	[8]2,960,793.93
1927	[9]8,207,980.43	[10]3,199,397.92

[1] 56th Annual Insurance Report of the Department of Trade and Commerce, Division of Insurance, of the State of Illinois, printed by authority of the State of Illinois—Part I, p. 112.

[2] Id. Part III, p. 73.

[3] 57th Annual Insurance Report, Part I, p. 100; 102.

[4] Id. Part III, p. 86.

[5] 58th Annual Insurance Report, Part I, p. 102; 104.

[6] Id. Part III, p. 86.

[7] 59th Annual Insurance Report, Part I, p. 110; 114.

[8] Id. Part III, p. 79.

[9] 60th Annual Insurance Report, Part I, p. 102; 104.

[10] Id. Part III, p. 87.

Sprinkler Leakage Insurance.

(Premiums Received in Illinois.)

Year	Foreign Stock Fire Insurance Companies	Foreign Stock Casualty Companies
1923	[1]$177,658.70	[2]$49,516.56
1924	[3]160,420.06	[4]46,968.55
1925	[5]185,097.29	[6]31,260.12
1926	[7]203,815.89	[8]32,560.32
1927	[9]267,208.12	[10]44,267.48

[1] 56th Annual Insurance Report of the Department of Trade a Commerce, Division of Insurance, of the State of Illinois, Part printed by authority of the State of Illinois, p. 113.

[2] Id. Part III, p. 73.

[3] 57th Annual Insurance Report, Part I, p. 100; 102.

[4] 57th Annual Insurance Report, Part III, p. 90.

[5] 58th Annual Insurance Report, Part I, p. 103; 105.

[6] Id. Part III, p. 90.

[7] 59th Annual Insurance Report, Part I, p. 111; 115.

[8] Id. Part III, p. 84.

[9] 60th Annual Insurance Report, Part I, p. 103; 105.

[10] Id. Part III, p. 92.